

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4549 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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CHANDRASHEKHAR F DIXIT

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MR HB SHAH for the Petitioner

MR NIGAM SHUKLA for the Respondents.

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/08/96

ORAL JUDGEMENT

1. The petitioner, a Head clerk in the office of Social Welfare Department, filed this Special Civil Application before this Court, and has made a grievance that his seniority in the cadre of Jr. clerk be treated from the year 1961, the year in which he was appointed as Assistant Sanchalak.

2. The petitioner was appointed on 5-8-1961 as Assistant Sanchalak which was a Government service in the

Social Welfare Department. Then he was absorbed as a Jr. clerk in the same department in the year 1975 under the order dated 17-1-1975. In the year 1978, the petitioner passed the Sub-service Departmental Examination and he was promoted to the post of Senior clerk. On 1-6-1982, the petitioner was promoted to the post of Head clerk. In the year 1983 he passed the Higher Standard Departmental Examination.

3. The Assistant Sanchalaks were employed even during the regime of the erstwhile State of Saurashtra. They were serving under a statutory board created by the State of Saurashtra. This cadre was continued even after the State of Saurashtra merged into greater bilingual State of Bombay on 1-11-1956. The State of Gujarat was formed with effect from 1-5-1960 and under the resolution dated 27th May, 1964, the staff working under the Saurashtra Backward Class Board were ordered to be absorbed. Though Assistant Sanchalaks were working in the said Board their service was treated to be equivalent to Jr. clerk and has to be absorbed as such. That resolution was not given effect to for some time and as such, those class of person have approached to this Court by filing of the Special Civil Application which has been allowed and the State was directed to give effect to the said resolution immediately. Under the resolution dated 2-9-1978 issued by the state of Maharashtra, it has been decided that the Assistant Sanchalaks should be treated as equivalent to Junior clerks in the Government service and that resolution has been made applicable to the employees who have been allocated to the State of Gujarat. A provisional seniority list of Junior clerks was published on 21-10-1962 in which the name of the petitioner was shown as if he joined the service only in the year 1975. He made a representation and grievance has been made that he should be treated as Junior clerk from 19-8-1961 the date on which he entered in the Government service though on the post of Assistant Sanchalak. The further grievance has been made that the Assistant Sanchalaks of the Saurashtra Backward Class Board were absorbed and given seniority as Junior clerk with effect from the dates they joined service and their past service was counted for seniority whereas the petitioner has been differently treated though he was the employee of State of Gujarat itself. That representation was rejected on 21st March, 1983. Hence, this Special Civil Application.

4. The learned counsel for the petitioner contended that the action of the respondents not to count his services in the cadre of Jr. clerk from 5-8-1961 is

arbitrary and it makes a hostile discrimination. The Assistant Sanchalaks of the erstwhile Saurashtra Backward Class Board were absorbed in the Gujarat of Government services' as Jr. clerk and they have been given the benefit of their past service, but the petitioner has been differently treated.

5. The reply to the writ petitioner has not been filed. The learned counsel for the respondents Shri Shukla contended that the petitioner's service has not been counted, as Assistant Sanchalak appointed in the Gujarat of Government and Assistant Sanchalak in Saurashtra belong to different classes. In view of this fact, Shri Shukla contended that there is no question of any discrimination.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The learned counsel for the respondent Shri Shukla does not dispute that Assistant Sanchalak of erstwhile State of Maharashtra who were serving in the Saurashtra Backward Class Board of erstwhile State of Saurashtra were absorbed in the Government Service of Gujarat State in the category of Jr. clerks and they have been assigned seniority from the date of their appointment on the said post in the State concerned. Shri Shukla has also not disputed that the petitioner has been appointed on 5-8-1961 on the post of Assistant Sanchalak in the Gujarat Government service. He has been absorbed as a Jr. clerk though in the year 1975. The respondent is unable to give out any justification for its action of not to count the service of the petitioner in the cadre of Jr. clerk from 5-8-1961. The reason given that those persons have come from the Maharashtra State on allocation to the Government of Gujarat is hardly any reason which deserves acceptance. The fact has to be considered that those persons were also appointed as Assistant Sanchalaks and they have been absorbed in the cadre of Jr. clerk, but their services were counted irrespective of the fact that they are discharging the services elsewhere in other State, then the services of the petitioner also should have been counted who has worked as Assistant Sanchalak in the service of Government of Gujarat. It is true that the petitioner and those persons are not belonging to one class, but nevertheless the fact remains that those persons were also absorbed from the post of Assistant Sanchalak to the cadre of Jr. clerk. It is not the case of the respondent that the pay scale of the post of Assistant Sanchalak in the erstwhile State of Saurashtra and Maharashtra was higher than the pay scale of Assistant

Sanchalak in the Government of Gujarat. The petitioner should have been extended the same benefit which has been given to that class of Assistant Sanchalak. The services should have been counted as Jr. clerk 5-8-1961 for the purpose of giving him the seniority.

7. In the result, this Special Civil Application succeeds. The order dated 21-3-1983, Annexure 'F' is set aside. The petitioner shall be entitled for all the consequential benefits which follows on quashing of Annexure 'F' dated 21-3-1983. The consequential benefits should be given to the petitioner within a period of six months from the date of receipt of certified copy of this order. Rule is made absolute in the aforesaid terms with no order as to costs.

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